

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**THEOPHUS L. KNIGHT,**

**Plaintiff**

**v.**

**Case No. 06-C-0392**

**DIVISION OF HEARINGS AND APPEALS and  
WISCONSIN DEPARTMENT OF HEALTH AND  
FAMILY SERVICES,**

**Defendants.**

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**DECISION AND ORDER**

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On April 3, 2006, the plaintiff Theophus L. Knight (“Knight”) filed his *pro se* complaint in this Court, alleging that he did not receive a fair hearing before the State of Wisconsin Division of Hearings and Appeals. In his complaint, Knight claims that the Department of Health and Family Services denied authorization for certain dental services that he required. Knight appealed this decision, but claims that the Division of Hearings and Appeals denied him a fair hearing. Knight brings his suit pursuant to the Americans with Disabilities Act and the Administrative Procedures Act. Presently before the Court is Knight’s request to proceed in his action *in forma pauperis* (IFP).

To authorize a litigant to proceed *in forma pauperis*, the Court must make two determinations: (1) whether the litigant is unable to pay the costs of commencing the action; and (2) whether the action warrants dismissal because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. §§ 1915(a)(1) & (e)(2).

Knight's affidavit shows that he is currently unemployed, unmarried, and is responsible for a child. (Pet. and Aff. to Proceed without Prepayment of Fees and/or Costs ["IFP Aff."] 1, 2.) He owns a 2003 Buick, valued at \$13,000, and a residence worth \$160,000. (*Id.*) Knight has \$25 in a checking or savings account. (*Id.* at 3, 4.) He identifies monthly expenses totaling approximately \$1,700.

In his affidavit, Knight lists a monthly income of \$1,400. (*Id.* at 3.) (The instructions on the IFP form indicate that litigants should not include disability payments when calculating their monthly income.) In the "Other Circumstances" portion of the IFP form, where individuals may identify other financial circumstances for the Court's consideration, Knight states: "I get SSD for me and my son \$2,307 a month." (*Id.* at 4.) The Court does not know whether the previously identified \$1,400 income is part of, or income in addition to, the \$2,307 disability payments. The Court will operate under the assumption that the \$1,400 listed as Knight's income is his portion of the total \$2,307 disability payments received by him and his son. Even with this understanding, Knight's household income (approximately \$2,300) exceeds his expenses (approximately \$1,700) by almost \$600. Furthermore, the Court notes that Knight owns a fairly recent model car, but indicates that he has no car payments. Knight values the car at \$13,000, a valuable piece of property. The absence of car payments further suggests that Knight possessed the resources to pay a significant expense fairly rapidly. The ownership of a \$160,000 residence also is a significant asset and likewise demonstrates financial resources.

Based on a review of his affidavit, the Court finds that Knight is able to pay the fees associated with commencing his action. Because the Court does not find Knight indigent for purposes of filing his action, the Court need not proceed to inquire whether Knight's action warrants dismissal because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

If he wishes to proceed, Knight is required to pay the filing fee associated with his action. If he does not do so within the time allotted by the Court, his action will be dismissed.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:**

Knight's Petition to Proceed without Prepayment of Fees and/or Costs (Docket No. 2) is **DENIED**.

Knight shall pay the filing fees and costs associated with his action no later than June 2, 2006. Failure to pay the requisite filing fee and costs by that date will result in the dismissal of his action.

Dated at Milwaukee, Wisconsin, this 1st day of May, 2006.

BY THE COURT:

s/Rudolph T. Randa  
HON. RUDOLPH T. RANDA  
Chief Judge